

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 993 of 1984****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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ASSAM BENGAL ROADWAYS LTD. - Appellant(s)**Versus****KRISHNA TEXTILES & 6 - Defendant(s)****Appearance :**

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MR HM BHAGAT for Appellant(s) : 1,
 MR PV NANAVATI for Defendant(s) : 1,
 None for Defendant(s) : 2 - 5.
 MR KV SHELAT for Defendant(s) : 6,
 MR ARUN H MEHTA for Defendant(s) : 7,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH**Date : 04/08/2006****ORAL JUDGMENT**

- 1.The present appeal has been filed by the appellant - original defendant No.6 (hereinafter referred to as "the defendant No.6") challenging the judgment and

decree passed by the learned City Civil Court, Ahmedabad, dated 15th April, 1983/4th May, 1983 passed in Civil Suit No. 2892 of 1978 by which, the defendant No.6 was directed to pay a sum of Rs.90,878.19 ps to the plaintiff with interest at the rate of 6% per annum from the date of the suit till realization.

2.The plaintiff - M/s. Krishna Textiles, a registered partnership firm, prayed for a money decree of a sum of Rs.90,878.19 ps against the defendant No.6. It was averred in the said suit that the plaintiff advanced a sum of Rs.1 lac to the defendant No.1 on 16th May, 1977. It was further averred that the defendant No.1 sold to the plaintiff goods worth Rs.90,878.18 ps by delivering 27 sale bills and 27 road receipts representing goods covered by the said sale bills, after duly endorsing the said road receipts in favour of the plaintiff. The said road receipts were issued by the defendant No.6 - Assam Bengal Roadways Pvt Ltd., to whom under the road receipts the defendant No.1 had entrusted cloth goods for carriage from Ahmedabad to Kanpur. The defendant No.1 was consigner and the Bank was a consignee. It was further averred that the defendant No.1 had originally sold the goods covered by the aforesaid road receipts

to its customers at Kanpur and had sent the said bills and the road receipts to the different customers through Bank but the said drawees/customers failed to retire the documents and as a result, the documents rebounded and that the defendant No.1 - consigner took back the said documents including road receipts from the Bank and endorsed the road receipts in favour of the plaintiff and issued sale bills thereof. That the value of the goods entrusted for carriage and represented by the 27 railway receipts was Rs.90,878.19 ps. It was further averred that the said sale took place on or about 6th June, 1977. It was further averred that the plaintiff went to Kanpur with road receipts and sought delivery of the goods from the defendant No.6 - carrier and the defendant No.6 - common carrier did not deliver the goods and the plaintiff, therefore, approached the defendant No.1 for return of Rs.1 lac but the defendant No.1 did not pay the amount and the plaintiff lodged his claim with the defendant No.6 - common carrier for recovery of Rs.90,878.19 by way of compensation for loss an amount of non-delivery of the goods. Thus, the defendant No.1 eventually became the vendor of goods to the plaintiff. The defendant Nos.2 to 5 were the partners of the defendant No.1 and the

defendant No.6 was a common carrier. The plaintiff prayed for a decree in a sum of Rs.1 lac against the defendants and a decree of Rs.90,878.19 against the defendant No.6.

3.The suit was resisted by the defendant Nos.2 to 4 by filing written statement at Exh.26. The defendant No.6 resisted the suit by filing written statement at Exh.52 contending inter alia that there was not privity of contract between the plaintiff and the defendant No.6 - common carrier and that he does not admit entrustments of the goods by the defendant No.1 to the defendant No.6 for carriage to Kanpur. It was further submitted that the consignment reached Kanpur was duly delivered by defendant No.6 to various parties as per specific instructions of the defendant No.1 and its associates.

4.The learned trial Court raised the issues at Exh.15. The plaintiff examined its partner at Exh.53. On appreciation of evidence, oral as well as documentary, the learned trial Court held that the plaintiff established that it was an endorsee of the road receipts in question and came to the possession thereof by virtue of the sale of goods by the consigner of

those road receipts to the plaintiff and the transfer of the road receipts taken place for value consideration and vested the property in the goods represented by the road receipts in the plaintiff. Considering the various provisions of the Carriers Act, the learned trial Court has rightly held that the defendant No.6 must be held liable for loss arising out of the non-delivery of the goods and such liability to compensate towards the plaintiff, who was the owner of the goods in question, which are not delivered. Now considering the value of the goods at Rs.90,878.19 ps covered by the road receipts and the defendant No.1 was indebted to the plaintiff for an amount of Rs.1 lac, the learned trial Court has rightly decreed the suit for an amount of Rs.90,878.19 ps against the defendant No.6 towards the compensation for non-delivery of the goods covered by the road receipts and has rightly passed a decree for an amount of Rs.9121.81 ps against the defendant Nos.1 to 5 i.e balance amount of Rs.1 lac. It is an admitted position that the defendant No.6 has failed to prove that the goods was delivered to various persons as per the instructions given by the defendant No.1. Under the circumstances, the learned trial Court has rightly passed a decree against the

defendant No.6 for an amount of Rs.90,878.19 ps. It is required to be noted that so far as defendant Nos.1 to 5 are concerned, they have already accepted the decree for an amount of Rs.9121.81 ps, the balance amount of Rs.1 lac.

5.On going through the records and proceedings as well as considering the reasons and findings of the learned trial Court with regard to loss caused to the plaintiff and the liability of the defendant No.6 towards non-delivery of the goods, this Court is in complete agreement with the reasoning and findings of the learned trial Court.

6.For the reasons stated above, there is no substance in the present appeal and the same is required to be dismissed and is, accordingly, dismissed. However, there shall be no order as to costs. Ad-interim relief, if any, stands vacated forthwith.

(M.R.SHAH, J.)

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